February 18, 2009

HOUSE BILL No. 1490

DIGEST OF HB 1490 (Updated February 16, 2009 11:26 pm - DI 113)

Citations Affected: IC 6-2.5.

Synopsis: Sales tax exemptions. Extends the gross retail tax exemption on cargo trailer and recreational vehicle sales to residents of states that do not provide a reciprocal sales tax exemption to Indiana residents. Provides that an aircraft is exempt from the gross retail tax if the gross lease revenue derived from leasing the aircraft is equal to or greater than: (1) the book value of the aircraft; or (2) the net acquisition price of the aircraft. (Current law provides that the aircraft is exempt from the gross retail tax if the amount of lease revenue is equal to or greater than: (1) 10% of the original cost or the book value of the aircraft; or (2) 7.5% of the original cost or book value of the aircraft if the value of the aircraft was at least $1,000,000.) Provides that if a person meets the threshold criteria be being considered exempt, the department of state revenue (department) has the burden of showing the aircraft is not exempt from the gross retail tax. Provides that a person may appeal to the department to lower the threshold if the actual price paid for the aircraft is below the book value. Allows a person to request certain waivers from the department pertaining to the threshold. Provides that a person must meet the threshold requirements for thirteen years in order for the aircraft to be exempt from the gross retail tax. Provides that a person who acquires an aircraft with the intent to rent or lease the aircraft to another person for use in public transportation may elect a partial exemption equal to 75% of the aircraft's net acquisition price.

Effective: Upon passage; July 1, 2009.

Fry, Neese, Walorski

January 14, 2009, read first time and referred to Committee on Ways and Means.
February 17, 2009, amended, reported — Do Pass.

February 18, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1490

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-2.5-5-8, AS AMENDED BY P.L.224-2007, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) As used in this section, "new motor vehicle" has the meaning set forth in IC 9-13-2-111.

(b) Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

(c) The following transactions involving a new motor vehicle are exempt from the state gross retail tax:

(1) A transaction in which a person that has a franchise in effect at the time of the transaction for the vehicle trade name, trade or service mark, or related characteristics acquires a new motor vehicle for resale, rental, or leasing in the ordinary course of the person's business.

(2) A transaction in which a person that is a franchisee appointed

by a manufacturer or converter manufacturer licensed under IC 9-23 acquires a new motor vehicle that has at least one (1) trade name, service mark, or related characteristic as a result of modification or further manufacture by the manufacturer or converter manufacturer for resale, rental, or leasing in the ordinary course of the person's business.

(3) A transaction in which a person acquires a new motor vehicle for rental or leasing in the ordinary course of the person's business.

(d) The rental or leasing of accommodations to a promoter by a political subdivision (including a capital improvement board) or the state fair commission is not exempt from the state gross retail tax, if the rental or leasing of the property by the promoter is exempt under IC 6-2.5-4-4.

(e) This subsection applies only **to aircraft acquired** after June 30, 2008. **Except as provided in subsection (j),** a transaction in which a person acquires an aircraft for rental or leasing in the ordinary course of the person's business is not exempt from the state gross retail tax unless the person establishes, under guidelines adopted by the department in the manner provided in IC 4-22-2-37.1 for the adoption of emergency rules, that the annual amount of the **gross** lease revenue derived from leasing **or rental of** the aircraft is equal to or greater than:

(1) ~~ten percent (10%) of the greater of the original cost or~~ the book value of the aircraft, ~~if the original cost of the aircraft was less than one million dollars ($1,000,000);~~ **as published in the Vref Aircraft Value Reference guide for the aircraft;** or

~~(2) seven and five-tenths percent (7.5%) of the greater of the original cost or the book value of the aircraft, if the original cost of the aircraft was at least one million dollars ($1,000,000).~~

(2) the net acquisition price for the aircraft.

If a person meets or exceeds this revenue threshold, the aircraft is presumptively exempt from gross retail tax and the department has the burden of showing that the aircraft is not exempt. If a person acquires the aircraft below the Vref Aircraft Value reference guide book value, the person may appeal to the department for a lease or rental threshold equal to the actual acquisition price paid if the person demonstrates that the transaction was completed in a commercially reasonable manner based on the aircraft's age, condition, and equipment. In determining whether a person meets the requirements in this subsection, the department shall consider all lease or rental revenue derived from leasing or renting the aircraft, regardless of

the relationship, if any, between the person and the lessee or renter of the aircraft.

(f) A person who does not meet the minimum lease or rental requirements of subsection (e) in a tax year may apply to the department for a waiver for that tax year of the imposition of the gross retail tax and the department shall grant the waiver if the person is unable to meet the lease or rental requirements because of:

(1) economic conditions;
(2) shortage of key personnel;
(3) weather;
(4) aircraft is out of service for extended maintenance;
(5) regulatory requirements of the Federal Aviation Administration; or
(6) other conditions acceptable to the department.

(g) A person must meet the requirements of subsection (e) for thirteen (13) years for the purchase of the aircraft to be exempt from the gross retail tax.

(h) If a transaction is exempt from the gross retail tax under subsection (e), the person shall remit the gross retail tax on a taxable lease or rental transaction for the aircraft.

(i) If the department determines that an aircraft is not exempt under subsection (e), the department in determining the amount of use tax that is due, shall deduct the amount of gross retail tax previously remitted to the department relating to the rental or lease of the aircraft.

(j) A person who acquires an aircraft with the intent to rent or lease the aircraft to another person for predominant use in public transportation by the other person or by an affiliate of the other person may, instead of requesting a one hundred percent (100%) exemption from gross retail tax under this section, elect to claim a partial exemption equal to seventy-five percent (75%) of the aircraft's net acquisition price. If a person claims a partial exemption under this subsection and pays the department gross retail tax equal to twenty five percent (25%) of the aircraft's net acquisition price, the department may not at any future time:

(1) assess the person gross retail or use tax with respect to the seventy five percent (75%) partial exemption claimed by the person in connection with its acquisition and use of the aircraft;
(2) require the person to meet the revenue threshold in subsection (e) with respect to its leasing or rental of the

aircraft; or
(3) require the person to submit annual reports, financial records, billing information, flight logs, insurance information, or other documentation to support application of the partial exemption.

SECTION 2. IC 6-2.5-5-39, AS AMENDED BY P.L.211-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 39. (a) As used in this section, "cargo trailer" means a vehicle:
(1) without motive power;
(2) designed for carrying property;
(3) designed for being drawn by a motor vehicle; and
(4) having a gross vehicle weight rating of at least two thousand two hundred (2,200) pounds.

(b) As used in this section, "recreational vehicle" means a vehicle with or without motive power equipped exclusively for living quarters for persons traveling upon the highways. The term includes a travel trailer, a motor home, a truck camper with a floor and facilities enabling it to be used as a dwelling, and a fifth wheel trailer.

(c) A transaction involving a cargo trailer or a recreational vehicle is exempt from the state gross retail tax if:
(1) the purchaser is a nonresident;
(2) upon receiving delivery of the cargo trailer or recreational vehicle, the person transports it within thirty (30) days to a destination outside Indiana;
(3) the cargo trailer or recreational vehicle will be titled or registered for use in another state or country; **and**
(4) the cargo trailer or recreational vehicle will not be titled or registered for use in Indiana. ~~and~~
~~(5) the cargo trailer or recreational vehicle will be titled or registered in a state or country that provides an exemption from sales, use, or similar taxes imposed on a cargo trailer or recreational vehicle that is purchased in that state or country by an Indiana resident and will be titled or registered in Indiana.~~
~~A transaction involving a cargo trailer or recreational vehicle that does not meet the requirements of subdivision (5) is not exempt from the state gross retail tax.~~

(d) A purchaser must claim an exemption under this section by submitting to the retail merchant an affidavit stating the purchaser's intent to:
(1) transport the cargo trailer or recreational vehicle to a destination outside Indiana within thirty (30) days after delivery;

and

(2) title or register the cargo trailer or recreational vehicle for use in another state or country.

The department shall prescribe the form of the affidavit, which must include an affirmation by the purchaser under the penalties for perjury that the information contained in the affidavit is true. The affidavit must identify the state or country in which the cargo trailer or recreational vehicle will be titled or registered.

~~(c) The department shall provide the information necessary to determine a purchaser's eligibility for an exemption claimed under this section to retail merchants in the business of selling cargo trailers or recreational vehicles.~~

SECTION 3. **An emergency is declared for this act.**

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1490, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-5-8, AS AMENDED BY P.L.224-2007, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) As used in this section, "new motor vehicle" has the meaning set forth in IC 9-13-2-111.

(b) Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

(c) The following transactions involving a new motor vehicle are exempt from the state gross retail tax:

(1) A transaction in which a person that has a franchise in effect at the time of the transaction for the vehicle trade name, trade or service mark, or related characteristics acquires a new motor vehicle for resale, rental, or leasing in the ordinary course of the person's business.

(2) A transaction in which a person that is a franchisee appointed by a manufacturer or converter manufacturer licensed under IC 9-23 acquires a new motor vehicle that has at least one (1) trade name, service mark, or related characteristic as a result of modification or further manufacture by the manufacturer or converter manufacturer for resale, rental, or leasing in the ordinary course of the person's business.

(3) A transaction in which a person acquires a new motor vehicle for rental or leasing in the ordinary course of the person's business.

(d) The rental or leasing of accommodations to a promoter by a political subdivision (including a capital improvement board) or the state fair commission is not exempt from the state gross retail tax, if the rental or leasing of the property by the promoter is exempt under IC 6-2.5-4-4.

(e) This subsection applies only **to aircraft acquired** after June 30, 2008. **Except as provided in subsection (j),** a transaction in which a person acquires an aircraft for rental or leasing in the ordinary course of the person's business is not exempt from the state gross retail tax unless the person establishes, under guidelines adopted by the department in the manner provided in IC 4-22-2-37.1 for the adoption of emergency rules, that the annual amount of the **gross** lease revenue derived from leasing **or rental of** the aircraft is equal to or greater than:

(1) ~~ten percent (10%) of the greater of the original cost or~~ the book value of the aircraft, ~~if the original cost of the aircraft was less than one million dollars ($1,000,000);~~ **as published in the Vref Aircraft Value Reference guide for the aircraft;** or

~~(2) seven and five-tenths percent (7.5%) of the greater of the original cost or the book value of the aircraft, if the original cost of the aircraft was at least one million dollars ($1,000,000).~~

(2) the net acquisition price for the aircraft.

If a person meets or exceeds this revenue threshold, the aircraft is presumptively exempt from gross retail tax and the department has the burden of showing that the aircraft is not exempt. If a person acquires the aircraft below the Vref Aircraft Value reference guide book value, the person may appeal to the department for a lease or rental threshold equal to the actual acquisition price paid if the person demonstrates that the transaction was completed in a commercially reasonable manner based on the aircraft's age, condition, and equipment. In determining whether a person meets the requirements in this subsection, the department shall consider all lease or rental revenue derived from leasing or renting the aircraft, regardless of the relationship, if any, between the person and the lessee or renter of the aircraft.

(f) A person who does not meet the minimum lease or rental requirements of subsection (e) in a tax year may apply to the department for a waiver for that tax year of the imposition of the gross retail tax and the department shall grant the waiver if the person is unable to meet the lease or rental requirements because of:

(1) economic conditions;

(2) shortage of key personnel;

(3) weather;

(4) aircraft is out of service for extended maintenance;

(5) regulatory requirements of the Federal Aviation Administration; or

(6) other conditions acceptable to the department.

(g) A person must meet the requirements of subsection (e) for thirteen (13) years for the purchase of the aircraft to be exempt from the gross retail tax.

(h) If a transaction is exempt from the gross retail tax under subsection (e), the person shall remit the gross retail tax on a taxable lease or rental transaction for the aircraft.

(i) If the department determines that an aircraft is not exempt under subsection (e), the department in determining the amount of use tax that is due, shall deduct the amount of gross retail tax previously remitted to the department relating to the rental or lease of the aircraft.

(j) A person who acquires an aircraft with the intent to rent or lease the aircraft to another person for predominant use in public transportation by the other person or by an affiliate of the other person may, instead of requesting a one hundred percent (100%) exemption from gross retail tax under this section, elect to claim a partial exemption equal to seventy-five percent (75%) of the aircraft's net acquisition price. If a person claims a partial exemption under this subsection and pays the department gross retail tax equal to twenty five percent (25%) of the aircraft's net acquisition price, the department may not at any future time:

(1) assess the person gross retail or use tax with respect to the seventy five percent (75%) partial exemption claimed by the person in connection with its acquisition and use of the aircraft;

(2) require the person to meet the revenue threshold in subsection (e) with respect to its leasing or rental of the aircraft; or

(3) require the person to submit annual reports, financial records, billing information, flight logs, insurance information, or other documentation to support application of the partial exemption.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1490 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 20, nays 0.